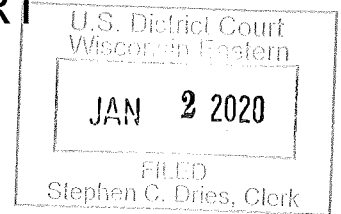


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN



UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

CASE NUMBER: 20-M- (60)

DAVID A. HAY
(DOB: 09/02/1980)

I, Craig M. Hoffer, the undersigned complainant, being duly sworn, states the following is true and correct to the best of my knowledge and belief. That on or about December 28, 2019, in the State and Eastern District of Wisconsin, David A. Hay, did commit violations of Title 18, United States Code, Sections 2422(b) and 2252A(a)(5)(B) "use of a means or facility of interstate commerce to attempt to entice a minor to engage in sexual activity" and "possession of child pornography."

I further state that I am an Investigator with the City of Neenah Police Department, and this complaint is based on the following facts:

Please see the attached affidavit.

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No


Signature of Complainant
Craig M. Hoffer

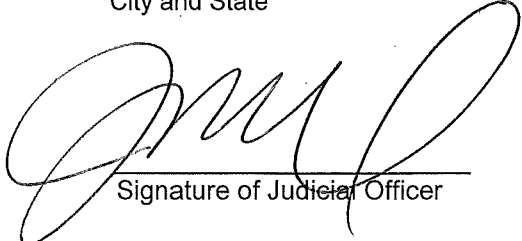
Sworn to before me and subscribed in my presence,

January 2, 2020
Date

at Green Bay, Wisconsin
City and State

The Honorable James R. Sickel
United States Magistrate Judge

Name & Title of Judicial Officer


Signature of Judicial Officer

Your affiant is employed as a sworn law enforcement officer with the City of Neenah Police Department in Neenah, Wisconsin, and has been for 15 years. Your affiant is a sworn law enforcement officer in the State of Wisconsin and is currently assigned to investigate, among other things, internet crimes against children. Your affiant has received specialized training in the investigation of online child exploitation and sensitive crimes and has participated in scores of undercover investigations.

On July 3, 2019, I was logged into my undercover Grindr account posing as a fourteen year-old boy. At this time, I received a message from a person with no name on his profile. When clicking on the profile, it indicated he was 38 years old and located 75 miles away. There were several pictures attached to the profile of a white male with salt and pepper colored hair. The profile stated, "Live in Brooklyn, work d/t manhattan, looking for fun and friends. Versatile...really. Also Hung. (Laughing with tear emoji) I enjoy great conversation, and wine. Travel, food, adventure. No racist or bigots. And NPNC! Midwest raised, New Yorker since 2016." The profile listed his height at 6'0" and weight at 185 pounds.

The first message he sent me asked, "Into daddies?" I responded, "Maybe, r u into young guys. Im 14 not 18." He acknowledged this message by stating, "Yea I'm good w that." I then asked him where he was from and he stated, "I live in New York but I'm here visiting this week." I informed him that my 14-year-old persona lives in Neenah. He responded stating, "(And I originally grew up in Wisconsin)." I went on to ask him what he was looking for. He responded, "Just friends and fun mostly. Hbu?" I stated, "I'm down for whatever." He then told me, "Nice. I'm versatile so open for anything." I know from my experience doing online undercover work that being "versatile" in the realm of homosexual men means that the person is willing to both perform sexual acts on other men and have other men perform sexual acts on them. He then stated, "I'll be near Neenah / Appleton tomorrow and Friday if you have any time to meet." I told him that I was going out of town with my family. He stated, "Ahhhhh okay. Where you going? Anywhere fun?" I told him that I was going to Minocqua. He responded, "Ohhh way up north. When will you be back?" I told him, "Sunday night late probably." He then asked if I wanted to trade pictures. I informed him, "I dont send nudes because that's all guys want do then." He then asked me to send him "non nudes." He told me, "I'm busy today yea. But if you think you'll have

any free time in minicqua let me know and we can meet up there I'll be close ish for part of the time." I told him I would probably be busy with my parents the whole time. He stated, "Ah okay. Well just let me know."

I then asked him, "How often u in WI?" He stated, "Every month or so." I might be free tonight after the wedding." At that point, it appeared he was very serious about meeting my 14-year-old persona, so I asked, "Can I get your # and then we can chat when you're coming back to Wisconsin? I get blocked from this app because people report me for being underage." Immediately he sent me his telephone number, "262-510-1983." I then started to have a conversation through the TextNow App, which I use for undercover telephone contact with suspects.

On July 3, 2019, at 11:59 a.m., I sent the first message to his number, 262-510-1983, stating, "Here is my #." He responded immediately stating, "Hey thanks. I'm David btw." I told him my name was Colton. He said, "Nice to meet you Colton. Lol (laughing with tears Emoji)." He went on to ask, "Can you send me a pic to add to your contact info on my phone?" I sent him the same picture as was my profile picture on Grindr at the time. He sent me a picture of him in a red shirt sitting next to what appears to be luggage. It was the same male whose pictures were on the Grindr account that I was speaking to just prior to switching to the TextNow app. He told my 14-year-old persona that I was "handsome." I informed him, "Just so u know when I'm with my parents I can't chat." He responded, "Okay no worries." So what are you up to the rest of the day?" I told him, "Make sure u let me know when u r coming to Wisconsin again." He responded, "Yea I will." I then responded to his question about what I was doing for the rest of the day. I told him I had to pack for going up north and I had to do some chores.

We began to speak about what time the wedding he was going to was taking place. He told me, "Wedding at 2. Dinner right after and should be done by 6 or 7 it's a small wedding with no real reception." I stated, "Sucks I'm going out of town." He said, "Yea (frowning emoji). Next time though." I asked, "What should we do the first time we meet?" He said, "Up to you. Could just chat and get to know each other." "What do you wanna do?" I stated, "I'm up for whatever. Not like we are gonna get to see each other a lot." He then responded, "yea sounds good. Maybe

makeout and other stuff if you want.” I said, “Sounds amazing,” and then asked him, “What do u like to do?” He responded, “Awesome! I love making out and sucking.” I know from experience doing online undercover work that “sucking” means giving a male oral sex. I stated, “Mmm that sounds fun!” I then asked him, “What else u into. I’m new to all this for the most part” He said, “Okay cool I was just gonna ask.” “I’m versatile with sex so I can top or bottom. But I really like making out and passion and also dirty talk if you’re up for it.” I know from experience doing online undercover work that “top” to homosexual males means being the one inserting his penis into the anus of another male, while “bottom” means being the one receiving another male's penis into their anus.

He went on to ask me, “What things do you want to try?” I stated, “Idk lol whatever u like.” “Everything is pretty new to me.” I then told him, “I’m gonna go now the grass so I dont get in trouble. Ttyl”. He responded, “Okay cutie. Ttyl.”

Later in the day, at 3:20 p.m., I sent him a message asking, “When u going back to NY?” He told me, “Sunday.” At 3:49 p.m. I told him, “My dad just sent me a message saying he might have to work late!” I then said, “He said we might drive up north tomorrow morning, so I might be available tonight.” He responded, “Ohhhhhh nice!” “When would you be free?” I told him, “I was thinking I could tell her I’m going to a movie. Then we would have a few hrs.” “But will u be done at you wedding for those times to line up? 7 or 730p is when the movies start.” He then said, “Ohhh I’m not sure. Things are running a bit behind right now. Any later movies?” I told him, “I can see. I dont want to go to a movie through! Just need it to be believable for my mom.” He told me, “Okay I understand (winking emoji).” I responded to him, “Spider-Man starts at 8:30 she would believe that. Could you be here by then?” “Where are we going to go?” He responded to me, “I think so but I’m not sure yet. Ummm I don’t know, maybe a hotel?” I told him, “Hotel sounds great!” I then asked him if he could pick me up in Neenah and bring me back to Neenah, and that the cinema is in Appleton, and I would tell my mother I was going to my friend’s house and his dad would take us to the movie. He responded, “Yea that works! I can let you know for sure by 6 if it will work. Okay?” I said, “Ok.” I talked with him about the possibility that I could convince my mom to let me go to the 10:00 p.m. show, but the 8:30 would be easier. I said, “830 would be easier though. What do u want to do in a motel room? (blushing emoji).” He responded,

"Haha anything you do baby." A short time later he sent me a message stating, "Hey baby I am not going to be able to make it tonight. The wedding dinner is still going. If you can find a way to be free tomorrow or Friday or Saturday let me know."

We exchanged more messages about when the wedding was ending and then he told me he had a 1.5 hour drive after the wedding to get to Neenah. He stated he was in Wisconsin Dells. At 7:25 p.m. he sent, "Hey baby I just don't think tonight will work. Let me know if you find a way to be free the rest of the week. Sorry (Frowning emoji)."

We then started to talk about seeing each other the next time he is in Wisconsin. I asked, "Any idea when that will be?" He stated, "Okay I think August." I asked where he usually stays in Wisconsin, and he said, "Usually by Oshkosh." That was the last I talked to him on July 3, 2019.

After receiving "David's" telephone number, I ran his number through TLO. The number came back a 100% match as the mobile number belonging to David Arnold Hay, M/W, DOB: xx/xx/1980. I ran a Wisconsin Department of Transportation (DOT) check on him and his DOT photo matches the photos from Grindr and the one he sent me through text on my TextNow app. His driver's license information also lists him at 6'00" tall and weighing 180 pounds, showing him with gray hair and brown eyes. All very similar to the statistics he listed on his profile for his Grindr account.

I continued to intermittently contact David Hay via the TextNow App, continuing in the same text conversation that has been previously downloaded. Between August 19, 2019, and August 20, 2019, I did not receive any returned messages from David Hay. On August 19, 2019, I stated, "If you aren't gonna come back and see me that's fine but I would like to know at least." The following morning he responded, "Hey Colton I really do want to. I was hoping I'd be able to book along weekend and let you know the dates but it's been hard to get time. This weekend would only be late Saturday (arriving around 8 or 9pm) and then leaving Sunday morning. Not sure if that would work for you. Otherwise a longer weekend will have to be later in September (sad emoji)". I informed him that I believed that would work for me. He responded, "Okay cool. Let me check tickets again and I can confirm for sure tomorrow". I responded, "Ok I'm so

excited!" "Bridgewood resort is closest to my house when looking for a motel if u care". He responded, "Ok awesome".

On August 23, 2019, I again asked him if he was coming. He stated, "I'm going to look at tickets again tonight. This morning they had gone up to \$600..." I asked if he was looking at flying into Appleton. He stated, "Yea." At 11:50 p.m., I asked him if he was going to be coming. He responded on August 24, 2019 at 5:07a.m., "Hey cutie I just looked again this morning and everything is still \$600 even through Green Bay. (Straight faced emoji, frowning emoji)." I told him, "If u have the \$ it would be amazing if u come today." He responded, "I wish I could. Sorry".

On December 9, 2019, David Hay texted me about coming back to Wisconsin at the end of December, I asked him, "Can you stay at a motel in Neenah close by me? I'm on break that week and it would be easy for us to get together during the day for sure." He stated, "Hoping to, yes!"

On December 10, 2019, I asked him, "Could u maybe get me some alcohol when we meet? I think that would help me relax a little. Plus it would be fun to get drunk with you too. (winking kissing face emoji)" He responded, "Lol maybe!" I said, "You should get a room with hot tub!" He said, "Sounds fun!" I told him that being in a hot tub with a hot guy was one of my fantasies and asked what fantasy of his we could make happen. He responded, "Just to be with you". I asked, "Why is that you fantasy?" He stated, "Because you're cute (winking face emoji)". I asked, "Lol that's it? What do you want to do with me?" He said, "Hah you decide". I asked, "Is your cock big?" He responded, "8", meaning 8 inches from my training and experience with prior cases. He then asked, "hbu?", asking how big my 14 year old persona, Colton's, penis is. I said, "Average about 6". He stated, "Cool". I asked him, "Are you thick too, that scares me a bit". He responded, "Haha a bit but not too thick". I asked, "Is it gonna hurt me if I let you inside my ass?" "I might have to stick to just oral if you're too big!" His response was, "Not if we take it slow and make sure you are prepared (winking face emoji). But whatever you are comfortable with". I asked, "Would you like to put it inside me?" He responded, "Whatever you want". I asked him, "What would we do to "prepare" me for your 8 inches?" He responded, "Well practice with toys helps (winking face emoji). Rimming and just getting excited". I stated, "I've

never tried toys, can you bring some?" He responded, "Sure (winking emoji) carrots and cucumbers also work". He was referencing using carrots or cucumbers as a form of sex toy in order to "prepare" my 14-year-old persona's anus for sex with him since he supposedly has an 8 inch long, fairly thick penis.

Throughout the day on December 26, 2019, I had continued conversation with Dr. David Hay, acting as my 14-year-old persona, Colton. I asked Hay what time he would be arriving on Saturday, meaning December 28th, and he stated, "I should be there by 6 or 7". There was small talk about Christmas mixed in, and then I asked him, "Did you get us a nice room somewhere?" He responded, "What hotel is best?" I stated, "Bridgewood resort seems nice and is close to my house. I've been to a wedding there and it was nice inside." He stated, "Ok cool I booked a whirlpool suite there!" I asked, "Really?!" "That sounds fricken amazing!" He responded, "Yea!", and then sent me a screen shot of, what appears to be, a bestwestern.com room reservation, stating check-in is Saturday December 28, 2019, and check-out is December 29, 2019. It states it's for 1 night, 1 room, 1 guest, and it shows a Whirlpool Suite-1 king bed.

I went on to state, "OMG that's so exciting!" "R u gonna bring some toys like you talked about?" He stated, "I can pick some up if you want. (winking emoji)" I said, "Mmhmm! Can u pick me up when you get to Neenah Saturday?" He responded, "Sure just let me know where". I went on to tell him that I would have him pick me up away from my house, and that I would tell my parents I'm staying at a friend's house. He asked, "Are you spending the night?" I said, "If that's ok with you I plan on it!" He said, "Perfect!" I asked, "Will I need a swim suit for the whirlpool? (winking kissing emoji)" He responded, "Haha up to you cutie". I asked, "Well you gonna wear one?" His response was, "Probably not (Winking emoji)".

We went on to talk about where he was at, because I was trying to figure out if he was currently in Wisconsin. He stated that he was in Wisconsin currently, but had to visit friends on December 26 and December 27, 2019. He then stated, "But I'm so excited for Saturday (winking kissing emoji)". I stated, "Me too! I have been waiting for so long to be alone with you". He then stated, "I'll be all yours". I said, "It makes me so excited to think about". He then asked me, "What are you looking forward to most?" I said, "Being alone to do whatever we want!" "How

about u?" He replied, "Same!". I then asked, "What's the first thing you're gonna do to me?" "Once we are alone". He stated, "Everything starts with a kiss". I said, "Yes it does". He told me, "Can't wait cutie". I went on to state to him, "I'm a little nervous about how big you say your cock is. It scares me because I've never had anything that big in me before". He said, "It's okay we can take it slow!" I responded, "Ok good". He then said, "And there's more to experience too!" I asked, "What do u mean?" He said, "Besides me in you there's other things we can do". I said, "I know". He then said, "Okay cool".

On December 27, 2019, I had further text message contact with David Hay, while posing as my 14-year-old persona, Colton. I asked him, "Are you gonna pick me up as soon as you're in Neenah? I cant wait" He responded, "I'll probably check into the hotel first then pick you up. That work?" I said, "Ok." "Will you let me know what time tomorrow or how will I know when to leave my house?" "I mean like let me know when you are checking in so I can get ready to go and meet you. I want as much time with you as possible!" He responded, "Yes I'll let you know!"

On December 28, 2019, I again began communicating with Hay via text. We talked about what each of us were doing during the day. At 12:53 p.m. I texted, "Only a few hrs. R u as excited as I am?" At 2:06 p.m. he sent, "Hey Colton I have been so excited. Unfortunately it's not going to work again...my parents have an emergency and I have to go help them... So frustrating If anything changes I'll let you know but right now I can't make it up tonight....and I fly out tomorrow. I'm sorry (frowning emoji)". I asked, "WHAT?" To this he stated, "My mom fell down the stairs. I'm headed there now." We then had conversation about me being frustrated and he continued to say he may be able to come later but wasn't sure. I asked, "Is there a way I can check into your room and wait for you?" He said, "I'm not sure. I can try to call in a bit. Usually they want an ID and credit card at check in". I said, "Tell them your nephew wants to meet you there when u get into town late. Idk". He said, "I'll try".

In the meantime, I went to the Bridgewood Resort Hotel, AKA Best Western Premier, and spoke to the General Manager and the Shift Manager. I asked if they had a reservation for a David Hay in their system, and they informed me that they did. Mark printed out a copy of the reservation

for me. The reservation lists all of David Hay's contact information, to include, address, telephone (which is the number I was texting him on, 262-510-1983), and his email address. It also included a Visa card which he had used to reserve the room, with the last 4 digits being 2330. They confirmed that David had reserved a Whirlpool Suite, with a fireplace, for December 28, 2019, checking out December 29, 2019, just as David had told me via text. The whirlpool room was also something David and I had discussed getting previously via text. Mark took me to see the room that was reserved by David, and it was in fact a Whirlpool Suite, just off the front lobby area of the hotel.

I continued texting and eventually asked him what time his flight was on Sunday. He responded, "My flight is at noon out of Milwaukee". He then said, "Unfortunately I think I'm just out the money on the room and it's not going to work..." Eventually I asked, "Isn't that whirlpool tub calling your name like it is mine?" He responded, "That tub and your cute butt". "(Winking emoji)".

I finally asked him, "R u scared or what's the real reason. Just be honest with me"? "I know u want to meet me. So I feel like you're torn for some reason." He then said, "Well right now it's my mom. But of course I'm a bit scared too". I asked, "Why u live in NY and I live here. Nothing to be scared of." He said, "Our age diff is one..." I responded, "So what. Age is nothing". "It's not like we are getting married!" He said, "I know cutie. And trust me I want to be with you". He then told me conclusively that he wasn't going to be able to come to the hotel when he said, "I wish I could. I won't be able to make it work tonight... we will have to try another time". He then stated, "I'm sorry baby". This was the last communication he had with me on 12/28/2019. This communication led me to believe he was still leaving the possibility of meeting with my 14 year old persona in the future open, but that something may have come up that was preventing him from actually coming to the hotel on December 28, 2019.

Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that David A. Hay, has committed acts in violation of Title 18, United States Code, Section 2422(b) "use of a facility or means to attempt to entice a minor to engage in sexual activity."

On December 30, 2019, I provided a search warrant and affidavit for David Hay's iPhone to the Honorable Judge Teresa Basiliere of the Winnebago County Circuit Court, Branch 1, which she approved and signed.

I searched the phone manually looking for any obvious evidence from this case. I was able to observe the two undercover photographs that I had sent to David Hay, that were of my 14-year-old persona, Colton. They were saved in a photo gallery on Hay's phone. I also observed that the entire text message conversations between Hay and I were still on Hay's phone. I came across nine sexually explicit photos of a young male that did not appear to be 18 years old that were saved to his Google photos on October 29, 2015. He appeared to be approximately 15-16 years old, based on him having very little body hair other than on his pubic region, he was wearing braces on his teeth, and his face looks very young. All but one of these photos were taken in a mirror, in what appears to be a bathroom, posing, with his penis or buttocks fully exposed, and displaying these areas of his body for his pleasure or the pleasure of whoever he was sending the photos to. They included photos of the male holding his penis in positions to make it more visible while it was fully erect. Another was taken bending over with his anus fully exposed and the center of attention in the photo, along with his testicles and penis being in the photo. Another he was bending at the waist with his penis in his hand as if he was trying to suck on his own penis. While another was taken from what appeared to be across the room, possibly by someone else, when the male was fully nude and standing in what appears to be a bedroom. In this picture he's pulling on the tip of his penis as if he trying to make it look bigger.

Uploaded to Hays Google photos on the same day of October 29, 2015, was a photograph of three juveniles in Tomah baseball uniforms. One of the kids appeared to be the same individual that was in the pornographic photographs, only when he was a few years younger in the baseball uniform.

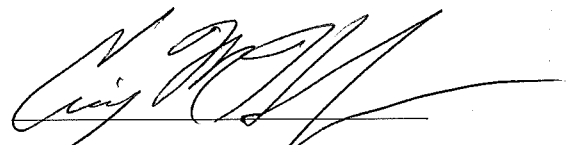
I got in contact with a member of the City of Tomah Police Department. He requested that I send a copy of the photograph of the child in the baseball uniform to him so he could see if you could positively identify him. He also requested that I text him a copy of the face of the child that

was in the sexy explicit pictures. I was able to crop a picture and send it to the department. A short time later he informed me that he believed that the subject in the pornographic pictures was John Doe, DOB: xx/xx/1994.

On December 31, 2019, I was able to locate a telephone number for John Doe. I asked him about the photographs. He said that he has sent several photographs to David Hay in the past. I knew that John Doe had braces in the photographs on David's phone, so I asked him when he had his braces removed. He informed me that he had gotten his braces removed sometime in his Sophomore or Junior year in high school. Given the fact that he was wearing braces in these photographs, he confirmed that he was under the age of 18 when these photographs were taken.

John Doe told me that he was not sure if he had sent the photographs to David Hay, or if David Hay had received them from someone else. John Doe informed me that he never had any sort of inappropriate contact with David Hay when he was a juvenile, but that he may have sent the photographs to David after he was an adult.

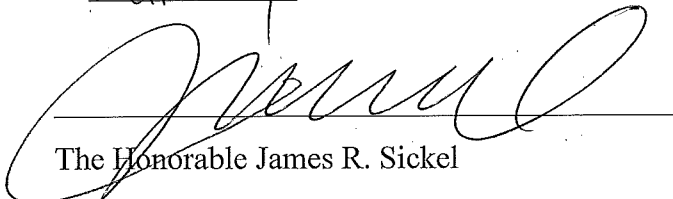
Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that David A. Hay, has committed acts in violation of Title 18, United States Code, Section 2252A(a)(5)(B), "possession of child pornography"



Investigator Craig M. Hoffer

City of Neenah Police Department

Subscribed and sworn before me this 2 day
of January, 2020.



The Honorable James R. Sickel

United States Magistrate Judge